

13 May 1997

Re: NEPA Call-In Technical Inquiry 0078 - Public Notification for FONSI

Dear NEPA Call-In User:

This letter is in response to your April 22, 1997 request for information regarding the requirements for GSA to make public Findings of No Significant Impact (FONSIs) resulting from an Environmental Assessment (EA). Specifically, you asked whether there is a Federal or GSA requirement for public notification or a public comment period for the publication of a FONSI after an EA.

#### SUMMARY OF FINDINGS

NEPA Call-In found a FONSI must be made publicly available. A public notification of availability must be made prior to the implementation of an action. NEPA Call-In determined there are no regulations stating the time requirement for public review of a FONSI prior to implementing an action unless the action (1) is of the type which normally requires an Environmental Impact Statement (EIS), (2) is an action for which similar actions have required an EIS, or (3) is an action without precedent. These actions require a 30-day public notification process. For FONSIs which do not fall into one of the above categories, the length of time for public notification prior to beginning an action should be determined by the appropriate agency administrator. In order to be assured an action is in full compliance with NEPA regulations, NEPA Call-In recommends all actions be handled as if they were not categorically excluded from the requirement of an EIS and follow the 30-day public notification process.

#### DETAILED FINDINGS

NEPA Call-In reviewed Title 40 Code of Federal Regulations (CFR) Part 1501, "NEPA and Agency Planning" (enclosed). Section 1501.4(e)(1), "Whether to prepare an environmental impact statement," states, "the agency shall make the finding of no significant impact available to the affected public as specified in Part 1506.6." NEPA Call-In reviewed Title 40 CFR Part 1506.6, "Public Involvement" (enclosed). This section states Agencies shall "(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected". Title 40 CFR 1506.6 gives a general overview of the requirement for public review of EAs and FONSIs but does not specify a time requirement.

GSA's specific requirements are outlined in PBS P 1095.4B, "PBS Preparation of Environmental Assessments and Environmental Impact Statements" (enclosed). GSA Order ADM 1095.1E, "Environmental considerations in decisionmaking" (enclosed), canceled PBS P 1095.4B but states it may be employed on an interim basis until a revised PBS order is issued, which has not been done. These documents are also available on the NEPA Call-In World Wide Web page at <http://www.gsa.gov/pbs/pt/call-in.nepa.htm>.

PBS P 1095.4B, Chapter 6, "Public information and involvement," paragraph 3, "Reviewing the finding of no significant impact (FONSI)," states "if the EA results in a FONSI, give public notice of the fact (under 40 CFR Part 1501.4(e)(1) and (2)) and make the FONSI available in the regional office for public review and comment before starting the action." Chapter 6,

Paragraph 17, "Other public notice", states the FONSI and EA must be made publicly available for 30 days before taking action if the proposed action is one that (1) normally would require an EIS as set out in Chapters 2-3 of PBS P 1095.4B, (2) is similar to actions for which several statements have been prepared, or (3) has been announced as the subject of a statement. If any of these three conditions apply to the proposed action, then the 30-day public notification period is required.

Finally, NEPA Call-In reviewed a Council on Environmental Quality (CEQ) document titled "Forty Most Frequently Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," published in the Federal Register, March 23, 1981. Question 38, "Must EAs and FONSI be made public? If so, how should this be done?" (enclosed), addresses the topic of public availability if EAs and FONSI. The answer from CEQ makes reference to Title 40 CFR Part 1506.6(b). It also states local newspaper notices may be more appropriate for regional or site-specific proposals. The document makes no reference to a time requirement for the notification process. However, the objective of the public notification process "is to notify all interested or affected parties. If this is not being achieved, then the methods should be reevaluated and changed. Repeated failure to reach the interested or affected public would be interpreted as a violation of the regulations." We contacted the CEQ to request further guidance on the specific time requirement for the public notification process. At this time we have not yet obtained an answer to our request from the CEQ, but will forward any information received from them in a follow-up to this letter.

The materials in this TI have been prepared for use by GSA employees and contractors and are made available at this site only to permit the general public to learn more about NEPA. The information is not intended to constitute legal advice or substitute for obtaining legal advice from an attorney licensed in your state and may or may not reflect the most current legal developments. Readers should also be aware that this response is based upon laws, regulations, and policies in place at the time it was prepared and that this response will not be updated to reflect changes to those laws, regulations and policies.

Sincerely,

(Original Signed)

NEPA Call-In Researcher